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SENATE BILL 776

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO PUBLIC UTILITIES; AMENDING AND ENACTING SECTIONS OF  
THE PUBLIC UTILITY ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 62-3-3 NMSA 1978 (being Laws 1967,  
Chapter 96, Section 3, as amended) is amended to read:

"62-3-3. DEFINITIONS. -- Unless otherwise specified, when  
used in the Public Utility Act:

A. "affiliated interest" means a person who  
directly or indirectly, through one or more intermediaries,  
controls or is controlled by or is under common control with a  
public utility. Control includes instances where a person is  
an officer, director, partner, trustee or person of similar  
status or function or owns directly or indirectly or has a  
beneficial interest in ten percent or more of any class of

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1 securities of a person;

2 B. "commission" means the public regulation  
3 commission;

4 C. "commissioner" means a member of the commission;

5 D. "municipality" means a municipal corporation  
6 organized under the laws of the state, and H-class counties;

7 E. "person" means an individual, firm, partnership,  
8 company, rural electric cooperative organized under Laws 1937,  
9 Chapter 100 or the Rural Electric Cooperative Act, corporation  
10 or lessee, trustee or receiver appointed by any court.

11 "Person" does not mean a class A county as described in Section  
12 4-36-10 NMSA 1978 or a class B county as described in Section  
13 4-36-8 NMSA 1978. "Person" does not mean a municipality as  
14 defined in this section unless the municipality has elected to  
15 come within the terms of the Public Utility Act as provided in  
16 Section 62-6-5 NMSA 1978. In the absence of voluntary election  
17 by a municipality to come within the provisions of the Public  
18 Utility Act, the municipality shall be expressly excluded from  
19 the operation of that act and from the operation of all its  
20 provisions, and no such municipality shall for any purpose be  
21 considered a public utility;

22 F. "securities" means stock, stock certificates,  
23 bonds, notes, debentures, mortgages or deeds of trust or  
24 [other] similar evidences of indebtedness issued, executed or  
25 assumed by a utility;

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1           G. "public utility" or "utility" means every person  
2 not engaged solely in interstate business and, except as stated  
3 in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that may own,  
4 operate, lease or control:

5           (1) any plant, property or facility for the  
6 generation, transmission or distribution, sale or furnishing to  
7 or for the public of electricity for light, heat or power or  
8 other uses;

9           (2) any plant, property or facility for the  
10 manufacture, storage, distribution, sale or furnishing to or  
11 for the public of natural or manufactured gas or mixed or  
12 liquefied petroleum gas for light, heat or power or other uses;  
13 but the term "public utility" or "utility" shall not include  
14 any plant, property or facility used for or in connection with  
15 the business of the manufacture, storage, distribution, sale or  
16 furnishing of liquefied petroleum gas in enclosed containers or  
17 tank truck for use by others than consumers who receive their  
18 supply through any pipeline system operating under municipal  
19 authority or franchise and distributing to the public;

20           (3) any plant, property or facility for the  
21 supplying, storage, distribution or furnishing to or for the  
22 public of water for manufacturing, municipal, domestic or other  
23 uses; provided, however, nothing contained in this paragraph  
24 shall be construed to apply to irrigation systems, the chief or  
25 principal business of which is to supply water for the purpose

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1 of irrigation;

2 (4) any plant, property or facility for the  
3 production, transmission, conveyance, delivery or furnishing to  
4 or for the public of steam for heat or power or other uses; or

5 (5) any plant, property or facility for the  
6 supplying and furnishing to or for the public of sanitary  
7 sewers for transmission and disposal of sewage produced by  
8 manufacturing, municipal, domestic or other uses; provided that  
9 the terms "public utility" or "utility" as used in the Public  
10 Utility Act do not include any utility owned or operated by a  
11 class A county as described in Section 4-36-10 NMSA 1978 either  
12 directly or through a corporation owned by or under contract  
13 with such a county;

14 H. "rate" means every rate, tariff, charge or other  
15 compensation for utility service rendered or to be rendered by  
16 a utility and every rule, regulation, practice, act,  
17 requirement or privilege in any way relating to such rate,  
18 tariff, charge or other compensation and any schedule or tariff  
19 or part of a schedule or tariff thereof;

20 I. "service" or "service regulation" means every  
21 rule, regulation, practice, act or requirement relating to the  
22 service or facility of a utility;

23 J. "Class I transaction" means the sale, lease or  
24 provision of real property, water rights or other goods or  
25 services by an affiliated interest to a public utility with

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1 which it is affiliated or by a public utility to its affiliated  
2 interest;

3 K. "Class II transaction" means:

4 (1) the formation after May 19, 1982 of a  
5 corporate subsidiary by a public utility or a public utility  
6 holding company by a public utility or its affiliated interest;

7 (2) the direct acquisition of the voting  
8 securities or other direct ownership interests of a person by a  
9 public utility if such acquisition would make the utility the  
10 owner of ten percent or more of the voting securities or other  
11 direct ownership interests of that person;

12 (3) the agreement by a public utility to  
13 purchase securities or other ownership interest of a person  
14 other than a nonprofit corporation, contribute additional  
15 equity to, acquire additional equity interest in or pay or  
16 guarantee any bonds, notes, debentures, deeds of trust or other  
17 evidence of indebtedness of any such person; provided, however,  
18 that a public utility may honor all agreements entered into by  
19 such utility prior to May 19, 1982; or

20 (4) the divestiture by a public utility of any  
21 affiliated interest that is a corporate subsidiary of the  
22 public utility;

23 L. "corporate subsidiary" means any person ten  
24 percent or more of whose voting securities or other ownership  
25 interests are directly owned by a public utility; and

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1 M "public utility holding company" means an  
2 affiliated interest that controls a public utility through the  
3 direct or indirect ownership of voting securities of that  
4 public utility. "

5 Section 2. Section 62-6-11 NMSA 1978 (being Laws 1941,  
6 Chapter 84, Section 23, as amended) is amended to read:

7 "62-6-11. SECURITIES VOID UNLESS APPROVED. -- All  
8 securities issued, assumed or guaranteed without application to  
9 and approval of the commission, except the securities mentioned  
10 in Sections 62-6-8 and 62-6-8.1 NMSA 1978, [~~shall be void~~] are  
11 voidable. "

12 Section 3. Section 62-8-7.1 NMSA 1978 (being Laws 1985,  
13 Chapter 221, Section 3, as amended) is amended to read:

14 "62-8-7.1. HEARING PROCEDURES FOR CHANGE OF RATES OF  
15 SMALL WATER AND SEWER UTILITIES. -- [~~A-~~] Whenever there is filed  
16 with the commission any schedule proposing any new [~~rate or~~]  
17 rates pursuant to Section 62-8-7 NMSA 1978 by any public  
18 utility as defined in Paragraph (3) or (5) of Subsection G of  
19 Section 62-3-3 NMSA 1978 whose annual operating revenues  
20 averaged less than five hundred thousand dollars (\$500,000)  
21 over [~~any~~] the most recent consecutive [~~three-year~~] five-year  
22 period, the [~~rate or~~] rates shall become effective as proposed  
23 by the utility without a hearing; provided that the utility  
24 shall be required to give written notice of the proposed rates  
25 to the ratepayers receiving service from the utility at least

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1 sixty days prior to filing the proposed rate change with the  
2 commission and provided further that the commission shall enter  
3 upon a hearing concerning the reasonableness of any proposed  
4 rates filed by such a utility pursuant to Subsections C and D  
5 of Section 62-8-7 NMSA 1978 when any rate increase would have  
6 the effect of increasing the [~~rate or~~] rates fifty percent or  
7 more in any twelve-month period or upon the filing with the  
8 commission of a protest seeking review of the proposed [~~rate~~  
9 ~~or~~] rates signed by ten percent or more of the ratepayers  
10 receiving service from such a utility. For purposes of this  
11 section, each person who receives a separate bill equals one  
12 ratepayer and each person who receives multiple bills equals  
13 one ratepayer. The petition shall be signed by the person in  
14 whose name service is carried. The petition shall be filed no  
15 later than twenty days after the filing with the commission of  
16 the schedule proposing the new rates. In all other respects,  
17 Section 62-8-7 NMSA 1978 shall apply to such water utilities.  
18 If a utility provides both water and sewer service, the annual  
19 operating revenues attributable to the provision of water  
20 service only shall determine whether the procedures specified  
21 in this section shall apply to any schedule proposing any new  
22 [~~rate or~~] rates for water service, and the annual operating  
23 revenues attributable to the provision of sewer service shall  
24 determine whether the procedures specified in this section  
25 shall apply to any schedule proposing any new [~~rate or~~] rates

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1 for sewer service. "

2 Section 4. Section 62-8-8 NMSA 1978 (being Laws 1967,  
3 Chapter 96, Section 6, as amended) is amended to read:

4 "62-8-8. INSPECTION AND SUPERVISION [~~FEES~~] FEE. -- Each  
5 utility doing business in this state and subject to the control  
6 and jurisdiction of the commission with respect to its rates or  
7 service regulations shall pay annually to the state a fee for  
8 the inspection and supervision of such business in an amount  
9 equal to one-half of one percent of its gross receipts from  
10 business transacted in New Mexico for the preceding calendar  
11 year. In calendar year 1992, that sum shall be payable in  
12 equal quarterly installments on or before the last day of  
13 February, May, August and November, respectively. Thereafter,  
14 that sum shall be payable on or before the [~~last day of~~  
15 ~~February~~] first day of April in each year. An inspection and  
16 supervision [~~fees~~] fee shall be paid by [~~such~~] utilities in  
17 addition to [~~any and~~] all property, franchise, license,  
18 intangible and other taxes, fees and charges [~~now or hereafter~~]  
19 provided by law. No similar inspection and supervision fee  
20 shall be measured by the amount of the gross receipts of such  
21 utility for the calendar year next preceding the date fixed in  
22 this section for the payment of the fee. In the case of  
23 utilities engaged in interstate business, the [~~fees~~] inspection  
24 and supervision fee shall be measured by the gross receipts of  
25 those utilities from intrastate business only for that

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1 preceding calendar year and not in any respect upon receipts  
2 derived wholly or in part from interstate business. No  
3 [~~supervision or inspection fees~~] inspection and supervision fee  
4 shall be charged on the gross receipts from the sale of gas,  
5 water or electricity to a utility regulated by the commission  
6 for resale to the public."

7 Section 5. Section 62-9-3 NMSA 1978 (being Laws 1971,  
8 Chapter 248, Section 1, as amended) is amended to read:

9 "62-9-3. LOCATION CONTROL--LIMITATIONS. --

10 A. The legislature finds that it is in the public  
11 interest to consider any adverse effect upon the environment  
12 and upon the quality of life of the people of the state that  
13 may occur due to plants, facilities and transmission lines  
14 needed to supply present and future electrical services. It is  
15 recognized that such plants, [~~lines and~~] facilities and  
16 transmission lines will be needed to meet growing demands for  
17 electric services and cannot be built without in some way  
18 affecting the physical environment where these plants,  
19 facilities and transmission lines are located. The legislature  
20 therefore declares that it is the purpose of this section to  
21 provide for the supervision and control by the commission of  
22 the location within this state of new plants, facilities and  
23 transmission lines for the generation and transmission of  
24 electricity for sale to the public.

25 B. No person, including any municipality, shall

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1 begin the construction of any plant designed for or capable of  
2 operation at a capacity of three hundred thousand kilowatts or  
3 more for the generation of electricity for sale to the public  
4 within or without this state, whether or not owned or operated  
5 by a person that is a public utility subject to regulation by  
6 the commission, or of transmission lines in connection with  
7 such a plant, on a location within this state unless the  
8 location has been approved by the commission. For the purposes  
9 of this section, "transmission line" means any electric  
10 transmission line and associated facilities designed for or  
11 capable of operations at a nominal voltage of two hundred  
12 thirty kilovolts or more, to be constructed in connection with  
13 and to transmit electricity from a new plant for which approval  
14 is required.

15 C. Application for approval shall contain all  
16 information required by the commission to make its  
17 determination, be made in writing setting forth the facts  
18 involved and be filed with the commission. The commission  
19 shall, after a public hearing and upon notice as the  
20 commission may prescribe, act upon the application. The  
21 commission may condition its approval upon a demonstration by  
22 the applicant that it has received all necessary air and  
23 water quality permits.

24 D. No approval shall be required for construction  
25 in progress on the effective date of this section or for

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1 additions to or modifications of an existing plant or  
2 transmission line.

3 E. The commission shall approve the application  
4 for the location of the generating plant unless the  
5 commission finds that the operations of the facilities for  
6 which approval is sought will not be in compliance with all  
7 applicable air and water pollution control standards and  
8 regulations existing or will unduly impair system  
9 reliability. The commission shall not require compliance  
10 with performance standards other than those established by  
11 the agency of this state having jurisdiction over a  
12 particular pollution source.

13 F. The commission shall approve the application  
14 for the location of the transmission lines unless the  
15 commission finds that the location will unduly impair  
16 important environmental values or the operation of the  
17 proposed transmission lines will unduly impair power system  
18 reliability.

19 G. No application shall be approved pursuant to  
20 this section which violates an existing state, county or  
21 municipal land use statutory or administrative regulation  
22 unless the commission finds that the regulation is  
23 unreasonably restrictive and compliance with the regulation  
24 is not in the interest of the public convenience and  
25 necessity, in which event and to the extent found by the

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1 commission the regulation shall be inapplicable and void as  
2 to the siting. When it becomes apparent to the commission  
3 that an issue exists with respect to whether a regulation is  
4 unreasonably restrictive and compliance with the regulation  
5 is not in the interest of public convenience and necessity,  
6 it shall promptly serve notice of that fact by certified mail  
7 upon the agency, board or commission having jurisdiction for  
8 land use of the area affected and shall make the agency,  
9 board or commission a party to the proceedings upon its  
10 request and shall give it an opportunity to respond to the  
11 issue. The judgment of the commission shall be conclusive on  
12 all questions of siting, land use, aesthetics and any other  
13 state or local requirements affecting the siting.

14 H. Nothing in this section shall be deemed to  
15 confer upon the commission power or jurisdiction to regulate  
16 or supervise any person, including a municipality, that is  
17 not otherwise a public utility regulated and supervised by  
18 the commission, with respect to its rates and service and  
19 with respect to its securities, nor shall any other provision  
20 of the Public Utility Act be applicable with respect to such  
21 a person, including a municipality.

22 I. The commission shall issue its order granting  
23 or denying the application within six months from the date  
24 the application is filed with the commission. Failure to  
25 issue its order within six months is deemed to be approval of

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1 the application; provided, however, that the commission may  
2 extend the time for granting approval for a transmission line  
3 that is subject to this section for an additional ten months  
4 upon finding that the additional time is necessary to  
5 determine if the proposed location of the line will unduly  
6 impair important environmental values. "

7 Section 6. Section 63-7-20 NMSA 1978 (being Laws 1951,  
8 Chapter 194, Section 1, as amended) is amended to read:

9 "63-7-20. UTILITY AND CARRIER INSPECTION--FEE. --

10 A. Each utility and carrier doing business in  
11 this state which is subject to the control and jurisdiction  
12 of the commission by virtue of the provisions of Article 11  
13 of the constitution of New Mexico with respect to its rates  
14 and service shall pay annually to the commission a fee in  
15 performance of its duties as now provided by law. The fee  
16 for carriers shall not exceed one-fourth of one percent of  
17 its gross receipts from business transacted in New Mexico for  
18 the preceding calendar year. The fee for utilities shall not  
19 exceed one-half of one percent of its gross receipts from  
20 business transacted in New Mexico for the preceding calendar  
21 year. This sum shall be payable annually on or before  
22 [~~January 20 or in equal quarterly installments on or before~~  
23 ~~January 20, April 20, July 20 and October 20~~] April 1 in each  
24 year. No similar fee shall be imposed upon the utility or  
25 carrier. In the case of utilities or carriers engaged in

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1 interstate business, the fees shall be measured by the gross  
2 receipts of the utilities or carriers from intrastate  
3 business only for the preceding calendar year and not in any  
4 respect upon receipts derived wholly or in part from  
5 interstate business. As used in this section, "utility"  
6 includes telephone companies and transmission companies.

7 B. When a fee is not paid on the date it is due,  
8 interest shall be paid to the state on the amount due. The  
9 interest on the amount due shall start to accrue on the day  
10 following the due date and will continue to accrue until the  
11 total amount due is paid. The rate of interest on a late fee  
12 payment shall be fifteen percent per year, computed at the  
13 rate of one and one-fourth percent per month.

14 C. In addition to any interest due on a late fee  
15 payment, a penalty shall be paid to the state for failure to  
16 pay the fee when it is due. The penalty imposed shall be two  
17 percent of the amount of the fee due.

18 D. The attorney general, in the name of the  
19 state, shall bring suit to collect fees, interest and  
20 penalties that remain unpaid."

21 Section 7. A new section of the Public Utility Act,  
22 Section 62-12-1.1 NMSA 1978, is enacted to read:

23 "62-12-1.1. [NEW MATERIAL] APPOINTMENT OF RECEIVER. --  
24 Whenever the commission determines, after notice and hearing,  
25 that a public utility is unable or unwilling to adequately

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1 service its customers or has been actually or effectively  
2 abandoned by its owners or operator, or is unresponsive to  
3 the rules or orders of the commission, the commission may  
4 commence an action in the district court of the county where  
5 the utility has its principal office or place of business for  
6 the appointment of a receiver to assume possession of its  
7 property and to operate its system upon terms and conditions  
8 in accordance with the provisions of the Public Utility Act,  
9 commission rules and orders of the court. Upon the order of  
10 the court, the receiver may issue receiver's certificates to  
11 provide funds to operate, repair, improve or enlarge the  
12 utility. Unless otherwise provided in the court order,  
13 payment of the receiver's certificates are a first lien on  
14 the real and personal property of the utility. The court  
15 shall prescribe the certificate's form, term and rate of  
16 interest. Receiver's certificates are exempt from the  
17 operation of any law that regulates the issuance or sale of  
18 securities of public utilities."

19 Section 8. EFFECTIVE DATE.--The effective date of the  
20 provisions of this act is July 1, 2003.

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